SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

Knights Templars and Masons Life Indemnity Company, *Petitioner,* *vs.* Rosa B. Jarman, *Respondent.*	Petition for writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit.

To Messrs. F. H. Bacon, E. M. Harber and A. G. Knight, Counsel for Respondent:

GENTLEMEN.—You will please notice that on Monday, the 4th day of March, 1901, or as soon thereafter as counsel can be heard, we shall submit in this court a motion that a writ of *certiorari* issue herein to the United States Circuit Court of Appeals for the Eighth Circuit, in accordance with the prayer of the petition, of which and of said motion and brief in support thereof a copy is herewith furnished you. Yours, etc.

HERVEY BRYAN HICKS,
S. S. GREGORY,
Attorneys for Petitioner.

Received copy of above notice, motion, petition and brief this 11th day of February, 1901.

HARBER AND KNIGHT,
FREDERICK H. BACON,
Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

Knights Templars and Masons Life Indemnity Company, *Petitioner,* *vs.* Rosa B. Jarman, *Respondent.*	Petition for writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit.

And now comes the above named petitioner, by Hervey Bryan Hicks and S. S. Gregory, its attorneys, and submits herewith its petition for a writ of *certiorari* to the United States Circuit Court of Appeals for the Eighth Circuit, requiring that court to certify to this court for its review and determination the case of Knights Templars and Masons Life Indemnity Company, plaintiff in error, against Rosa B. Jarman, defendant in error, and moves that a writ of *certiorari* may be awarded as therein prayed.

HERVEY BRYAN HICKS,
S. S. GREGORY,

Attorneys for Petitioner, Knights Templars and Masons Life Indemnity Company.

SUPREME COURT OF THE UNITED STATES.

October Term, A. D. 1900.

Petition by plaintiff in error for a writ of *certiorari* from the Supreme Court directed to the United States Circuit Court of Appeals for the Eighth Circuit, requiring that court to certify to the Supreme Court the case of Knights Templars and Masons Life Indemnity Company, plaintiff in error, against Rosa B. Jarman, defendant in error.

To the Supreme Court of the United States:

The petitioner, the Knights Templars and Masons Life Indemnity Company, plaintiff in error, as above mentioned, respectfully represents:

That on the 19th day of January, in the year 1899, Rosa B. Jarman brought her action at law in the Circuit Court of Grundy County, Missouri, against this petitioner to recover as beneficiary in a policy of insurance issued by petitioner upon the life of John P. Jarman, and dated October 24, 1885.

That petitioner, when said suit was brought, being a citizen of Illinois, and said Rosa B. Jarman then being a citizen of Missouri, and claiming to recover in her said suit more than two thousand ($2,000) dollars exclusive of interest and costs, petitioner being defendant therein, and having its domicile in Illinois, applied to remove the said cause to the Circuit Court of the United States for the Western District of Missouri; and upon such application such proceedings were had that, upon the ground of such diversity of citizenship, the said cause was removed to the said Circuit Court of the United States, and there tried and determined.

That final judgment was rendered in said cause June 26, A. D. 1899, in favor of said Rosa B. Jarman and against petitioner for the sum of six thousand and thirteen dollars and thirty cents ($6,013.30), besides costs of suit.

Thereafter petitioner, defendant in that suit, sued out and served a writ of error from the said Circuit Court of Appeals for the Eighth Circuit to reverse said judgment, and caused a citation to be duly signed and served, in pursuance of which a copy of the record of said cause was duly filed and now remains in the office of the Clerk of said Circuit Court of Appeals.

And that such proceedings were thereupon had in said Circuit Court of Appeals, that thereafter and on the 15th day of October, A. D. 1900, the judgment of the said Circuit Court of the United States for the Western District of Missouri was by said Circuit Court of Appeals affirmed.

That petitioner thereafter duly filed a petition for rehearing, which was overruled and denied December 17th, A. D. 1900.

That inasmuch as the jurisdiction of the said Circuit Court was invoked only upon the ground of the diverse citizenship of the parties, the said judgment of the said Circuit Court of Appeals is final.

That this petitioner ventures respectfully to suggest to this court the following considerations arising out of the facts and history of this cause in support of petitioner's application.

The case was tried by the court without a jury under a written stipulation which also stipulated the facts in the case.

It thus appeared that John P. Jarman, the insured, while insane to such an extent as to be incapable of understanding the nature or consequences of his act, took his own life on the 12th of September, 1898. The policy in suit contained a clause providing that in case of the self-destruction of the holder of the policy, whether vol-

untary or involuntary, sane or insane, the policy should be void, with a *proviso* that in case of suicide the Company should pay to the persons entitled under the policy the amount of the assessments theretofore paid by the insured without interest, the company being a co-operative or assessment company organized under the laws of Illinois, and the policy being an assessment policy.

It was contended, however, by the plaintiff, Mrs. Jarman, that this clause in the contract of insurance was inoperative on account of the following provision of the statutes of Missouri:

> "In all suits upon policies of insurance on life hereafter "issued by any company doing business in this state, it shall "be no defense that the insured committed suicide, unless it "shall be shown to the satisfaction of the court or jury trying "the case that the insured contemplated suicide at the time he "made his application for the policy, and any stipulation in the "policy to the contrary shall be void."—Revised Statutes of "Missouri, 1879, Sec. 5982 (afterwards Sec. 5855 Rev. Stats. "1889).

The policy was written in 1885, while this statute was in force. There then was no law in Missouri expressly applicable to assessment insurance companies; but in 1887 the Legislature of that state passed an act for the incorporation and regulation of such societies, including also in its provisions the regulation of companies incorporated in other states, and providing that no corporation doing business under that act should be subject to any other provisions or requirements of the general insurance laws of the state.

Sec. 10, Act of 1887, now Sec. 5869 Rev. Sts. 1889.

The petitioner complied in all respects with this statute, and in a case to which it was a party the Supreme Court of Missouri decided that assessment insurance companies were thus withdrawn

from the operation of the general insurance laws of the state and were governed only by the provisions of the special law of 1887.

Haynie v. *Indemnity Co.*, 139 Mo., 416.

As that act contained no such provision prohibiting an insurance company from defending on the ground that the insured took his own life, where the policy stipulated that this should be a defense, the petitioner contended that this was, in effect as to assessment companies, a repeal of this provision of the act of 1879, and that, therefore, there was nothing to prevent the court from giving effect to the contract of the parties and holding that self-destruction was a defense.

But the Circuit Court of Appeals, or a majority of the Judges thereof, ruled that the act of 1879, being in force when the policy in suit was written, became so far a condition of the policy that if the Legislature thereafter repealed it such repeal could not be admitted to affect the contract of insurance without infringing upon Section 10, Article 1 of the Constitution of the United States, which provides, among other things, that no state shall pass any law impairing the obligation of contracts.

That is to say, the parties having entered into a contract, entirely valid except for the statute, and consistent with good morals, by which it was agreed that a certain risk should not be assumed by the insurer, and that death of the insured following from the excepted cause, the company's defense should prevail, the repeal of a statute prohibiting such defense, after the policy was issued but before any loss had occurred under it, could not be held to render the contract enforceable as the parties had made it, because thus the obligation of the contract would be impaired by subsequent legislation.

On this point the prevailing opinion contains this language:

"In the light of the statute, the parties must be presumed "to have agreed that the insurer would assume the risk of death "by suicide, because the law would not permit them to agree "otherwise. We are of opinion, therefore, that it was not within "the power of the Legislature to declare in 1887, with respect "to the policy in suit, and others of like character, that self-"destruction might be pleaded as a defense, which was tanta-"mount to saying that the policy should not comprehend the risk "of death by suicide, because a legislative enactment to that "effect would impair the obligation evidenced by the policy con-"trary to the mandate of the Federal and the State Constitu-"tions."

104 Fed. Rep., 641-2.

It is true that it was also contended by the plaintiff, Mrs. Jarman, that by act approved March 15, 1897, the Legislature of Missouri had expressly declared that the so-called suicide statute of 1879 should govern all foreign insurance companies. But the Court of Appeals entirely disregarded this contention, probably because the act of 1897 was, for reasons which will be stated in argument, invalid, through failure to comply with the constitution of Missouri in the method of its adoption.

It was also contended by the company that inasmuch as suicide means wilful self-destruction, whether taken in its popular meaning or in its technical legal significance, the defense interposed in this case was not the defense of suicide within the meaning of the statute, and, therefore, the statute was inapplicable. The parties here stipulated that the insured, "while insane to such an extent "as to be incapable of understanding the nature or consequences of "his act, took his own life, and came to his death on the 12th day "of September, 1898, by a gun-shot wound, inflicted by himself.

"It is not contended, however, by plaintiff, that said self-destruc-
"tion was the result of accident."

On this question Judge Sanborn dissented, and held that the judgment should be reversed and the recovery limited to the amount paid by the insured in assessments in accordance with a stipulation on that subject contained in the record.

Another defense interposed by the Company was this: The policy provided for the payment of five thousand ($5,000) dollars, and all the money paid on the policy in assessments, subject to certain limitations which will be presently noticed. The application of the insured on which the policy was issued was made a part thereof. That document was signed by the insured, and its concluding provision was as follows:

> "I further agree, if accepted, to abide by the constitution,
> "rules and regulations of the company, as they now are or may be
> "constitutionally changed hereafter."

The limitation on the promise to pay contained in the policy is found in Section 1, Article 7, of the Company's constitution printed on the back of the policy. That section, after prescribing the duty of the Board of Directors to pay within sixty (60) days after proof of death to designated beneficiaries the amount of the deceased member's policy, proceeds thus:

> "Provided that a policy of membership for five thousand
> "($5,000) dollars shall be good for all the money in the death
> "fund arising from one assessment; provided, it shall not ex-
> "ceed five thousand ($5,000) dollars and all the money paid
> "on the policy in assessments; and a certificate for four thou-
> "sand ($4,000) dollars shall be good for four-fifths of all the
> "money in the death fund arising from one assessment, pro-
> "vided it shall not exceed four thousand ($4,000) dollars and all
> "the money paid on the policy in assessments; and so on in the
> "same proportion as to all certificates."

Thereafter, on the 8th of January, 1889, the constitution was duly amended by vote of the members, not the directors as the learned Circuit Judge in his opinion persistently and inaccurately reiterates, limiting the recovery in respect of assessments to the amount of those paid for the first five years.

On February 20, 1894, it was in the same lawful method amended by eliminating the proviso in Section 1, Article 7, and on January 14, 1896, the constitution was further in like manner amended by repealing a section providing for indorsements on the policy of assessments paid thereon, and the payment of the amount thereof to the benficiary at death.

The effect was that in this case the company was liable if at all for the face of the policy only, provided these provisions were enforceable as against the policy in suit, which was issued before they were adopted.

This Company, petitioner herein, is a purely co-operative enterprise. It has no capital stock, and its management is absolutely directed by its members or policy holders. It has no means of meeting its losses except by assessments on its members. The larger the sum paid in losses the greater must be the amount raised by assessments. If the amount payable on certificates or policies is reduced the members get the benefits of such reduction in reduced assessments. The members, having agreed in advance to abide by any changes in the constitution, having themselves made such changes, the insured in this case, after notice of these changes, having continued to pay his assessments on the basis of the new arrangement, thus receiving its benefits, the petitioner respectfully submits that in the absence of any suggestion of fraud, bad faith or oppression on the part of the policy holders making these changes, of all which the record of this cause is quite barren, the beneficiary under the policy ought now to be regarded as bound by them.

The petitioner respectfully shows that it is vital and essential to assessment companies to have the right to readjust their arrangements with members in accordance with the results of their experience in the business of life insurance. That this company and such companies generally have no reserve fund, but take only so much from their members as is necessary to meet current losses; and when owing to lapse of time and increasing age of members, death losses increase, there must be heavier assessments or some diminution in benefits; and that it is for the members acting in accordance with their constitution to determine, as they did in this case, which alternative shall be chosen.

Your petitioner respectfully submits that the questions involved in this case are of wide general interest and importance. That many millions of assessment insurance are now outstanding throughout this country, and that every company engaged in that line of insurance and every member of such an insurance company is vitally interested in the questions involved in this case.

A certified copy of the entire record of the case in the Circuit Court of Appeals is furnished herewith to this court by this petitioner as part of the application.

Wherefore your petitioner respectfully prays that a writ of *certiorari* may issue out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding the said court to certify and send to this court by a day certain, therein to be designated, a full and complete transcript of the record and all proceedings taken or had in the said Circuit Court of Appeals in the said case therein of Knights Templars and Masons Life Indemnity Company, plaintiff in error, against Rosa B. Jarman, defendant in error, to the end that this case may be certified to this court for its review and determination as provided

in Section 6 of the act of Congress entitled, "An Act to establish "Circuit Courts of Appeals and to define and regulate in certain "cases the jurisdiction of the courts of the United States and for "other purposes. Approved March 3, 1891," and that your petitioner may have such other and further relief or remedy in the premises as to this court may seem appropriate and in conformity with law.

And your petitioner will ever pray, etc.

KNIGHTS TEMPLARS & MASONS LIFE INDEMNITY COMPANY OF ILLINOIS.

By HERVEY BRYAN HICKS,
S. S. GREGORY,
Its Attorneys.

THE PETITION for certiorari has been prepared with a studious effort to avoid such an elaborate statement of detail as to obscure the questions of law presented in this case. It is hoped, therefore, that any further statement of facts is unnecessary, except that possibly in the course of argument it may become expedient to add something on particular points to what has been already given in the petition. The questions will be discussed in the order in which they are presented in the petition.

First, the constitutional question as to the effect of what may be called the repeal of the statute prohibiting the defense of self-destruction sought to be secured to the company by the policy of insurance.

As it was claimed by the defendant in error that a statute subsequent to that which is designated as a repeal of this act expressly imposed this disability upon assessment companies like plaintiff in error, a few words will be said as to the constitutionality of the later act.

The next question is that upon which Judge Sanborn dissented from the judgment below; whether a statute prohibiting the defense of suicide can be held to apply to a defense not of suicide, either in its popular or technical legal significance, but to the defense of self-destruction by the insured while insane to such a degree that he was incapable of understanding the nature or consequences of his act.

The third and last question is, whether under the contract of insurance, by which the insured expressly agrees to abide by the constitution, rules and regulations of the company as they then were or might be constitutionally changed thereafter, his beneficiary is affected by a change legally made and sought to be applied to all policy holders in the lifetime of the insured, and of

which he had knowledge, by which the sum payable at his death was somewhat though not very considerably reduced from what it would have been under the plan in force when his policy was issued.

I.

Inasmuch as the Court of Appeals held in effect that the statute prohibiting the defense of suicide had been repealed as to companies like plaintiff in error by subsequent legislation, this argument may perhaps properly rest on that assumption. The statute prohibiting this defense was originally enacted in 1879, and was subsequently incorporated in the Revised Statutes of Missouri of 1889, as Section 5855. On this point the opinion of the court below proceeds as follows:

"On March 30, 1887, nearly two years after the policy in "suit was issued, the legislature of the State of Missouri enacted "a law with reference to insurance companies doing business on "the assessment plan, which now appears in the Revised Statutes of "that state for the year 1889, as article 3, c. 89 (being sections 5860 "to 5872 both inclusive). This act placed foreign insurance com- "panies doing business in the state on the assessment plan under "the supervision of the insurance department of the state, and one "section thereof (being section 5869) subjected such foreign assess- "ment companies to all the provisions of section 5912 of the Revised "Statutes of Missouri for 1889, which was then in force, but con- "cluded with the following proviso:

"'Provided, always, that nothing herein contained shall sub- "ject any corporation doing business under this article to any other "provisions or requirements of the general insurance laws of this "state, except as distinctly herein set forth.'

"Section 5912, to which reference was thus made, related "wholly to the mode of obtaining service on foreign insurance com-

"panies doing business within the State of Missouri; and it is "accordingly claimed that the operation of the proviso was to re- "lieve insurance companies doing business on the assessment plan, "as distinguished from companies doing business in other ways, "from the disability imposed by section 5855, to plead suicide as a "defense, inasmuch as section 5855 forms a part of the general "insurance laws of the state, and was not incorporated into the "act of March 30, 1887, relating to assessment companies. It is "by no means certain that the proviso in question was intended "by the lawmaker to except assessment companies from the opera- "tion of section 5855. The legislature did not see fit to repeal "that section, but left it standing and in full force as a part of the "statute law of the state—at least, in so far as it affected ordinary "life companies; and it is difficult to assign any reason for prohibit- "ing companies of the latter kind from pleading the defense of "suicide which does not apply with equal force to assessment com- "panies. It has been held, however, *Haynie* v. *Indemnity Co.*, "139 Mo., 416, 41 S. W., 461, that from the date of its adoption "the proviso did exempt assessment companies from the operation "of section 5855, and enable them to plead suicide as a defense "to policies thereafter issued which by their terms excluded the "risk of death by suicide. Accepting that as an interpretation of a "local law by the highest court of the state, which this court is "required to adopt, we pass to the inquiry whether it was com- "petent for the legislature, by the proviso in the act of March 30, "1887, to relieve the defendant company from the operation of sec- "tion 5855, as respects policies theretofore issued and then out- "standing, which were clearly subject to its provisions when they "were issued."

104 Federal Reporter, 640-641.

Now, as a question of first impression, it certainly seems to be novel doctrine that where parties enter into a contract which would be effectual, upon a contingency thereafter arising, to enable one of the parties sued upon such contract to assert a com-

plete defense, except for the provisions of a statute existing at the date of such contract and prohibiting such a defense, the repeal of that statute before the event on which the liability of the defendant is asserted has occurred can in any just sense be said to impair the contract of the parties. Whether it is so far applicable to their rights as to relieve the defendant from the disability imposed by the statute repealed is quite another question. That is a question of statutory construction; this is a question of constitutional power.

The former question in this case was apparently decided in favor of the plaintiff in error's contention: it is the question of power that was resolved against it.

The leading modern authority upon American constitutional law, in so far as a writer of text can be regarded as an authority, is Thomas M. Cooley. In his great work upon Constitutional Limitations, he states, with his usual accuracy and clearness, the limitation upon legislative power in respect of legislation intended to remove statutory obstacles to the enforcement of contracts otherwise valid. At page 374 he says: "When such acts go no further than to bind a party by a contract which he has attempted to enter into, but which was invalid by reason of some personal inability on his part to make it, or through neglect of some legal formality, or in consequence of some ingredient in the contract forbidden by law, the question they suggest is one of policy and not one of constitutional power." The learned court below observed after employing the language already quoted:

"In considering this question it must be borne in mind that "Section 5855 not only provides that in suits on life insurance "policies issued by companies doing business in the State of Mis-"souri, it shall be no defense that the insured committed suicide, but

"also declares that any stipulation in the policy to the contract shall be void."

It is thought the significance of this fact is possibly misapprehended by the learned court; but if it is precisely such as the court seems to suppose, what then appears except that there was a contract invalid in consequence of some ingredient forbidden by law? Such a case falls within one of the classifications of Judge Cooley; that of cases in which statutes seeking to relieve existing contracts of such provisions suggest no question of constitutional power.

Another still greater authority may be invoked. In his Commentaries upon the Constitution, Joseph Story says upon this point:

"If a state statute should, contrary to the general principles of "law, declare, that contracts founded upon an illegal or immoral "consideration, or otherwise void, should nevertheless be valid, "and binding between the parties, its retrospective character could "not be denied; for the effect would be to create a contract between "the parties, where none had previously existed. Yet it would not "be reached by the constitution of the United States; for to create "a contract, and to impair and destroy one, can never be construed "to mean the same thing. It may be within the same mischief, and "equally unjust, and ruinous; but it does not fall within the terms "of the prohibition."

Vol. 3, Section 1392.

But the learned court below proceeds upon the theory that the statute was worked into the contract and became a part of it. I must again quote Story upon this point:

Vol. 3, Section 1377.—"But much diversity of opinion has "been exhibited upon another point: how far the existing law enters "into, and forms part of, the contract. It has been contended by "some learned minds, that the municipal law of the place, where

"a contract is made, forms a part of it, and travels with it wherever "the parties to it may be found. If this were admitted to be true, "the consequence would be, that all the existing laws of a state, "being incorporated into the contract, would constitute a part of its "stipulations, so that a legislative repeal of such laws would not in "any manner affect it."

And again, Section 1378: "It has, therefore, been judicially "held by a majority of the Supreme Court, that such a doctrine is "untenable. Although the law of the place acts upon a contract, "and governs its construction, validity and obligation, it consti- "tutes no part of it. The effect of such a principle would be a "mischievous abridgment of legislative power over subjects within "the proper jurisdiction of states, by arresting their power to "repeal, or modify such laws with respect to existing contracts."

To this may be added the concluding language of the section last cited as follows:

"The parties know that they must obey the laws; and that "the laws act upon their contracts, whatever may be their inten- "tion."

Upon this question the learned author refers to the case of *Ogden* v. *Saunders*, 12 Wh., 213. Two brief quotations from the opinion of Chief Justice MARSHALL in that case are quite applicable. At page 338 he says:

"What, then, was the original legal obligation of the contract "now under the consideration of the court?

"The plaintiff insists that the law enters into the contract so "completely as to become a constituent part of it. That it is to be "construed as if it contained an express stipulation to be dis- "charged, should the debtor become insolvent, by the surrender of "all his property for the benefit of his creditors, in pursuance of the "act of the legislature.

"This is, unquestionably, pressing the argument very far; and "the establishment of the principle leads inevitably to consequen- "ces which would affect society deeply and seriously.

"Had an express condition been inserted in the contract, de-
"claring that the debtor might be discharged from it at any time
"by surrendering all his property to his creditors, this condition
"would have bound the creditor. It would have constituted the
"obligation of his contract; and a legislative act annulling the
condition would impair the contract."

Again, at page 343, he says:

"It is not, we think, true, that contracts are entered into in
"contemplation of the insolvency of the obligor. They are framed
"with the expectation that they will be literally performed. In-
"solvency is undoubted a casualty which is possible, but is never
"expected. In the ordinary course of human transactions, if even
"suspected, provision is made for it, by taking security against it.
"When it comes unlooked for, it would be entirely contrary to rea-
"son to consider it as a part of the contract.

"We have, then, no hesitation in saying that, however law may
"act upon contracts, it does not enter into them, and become a part
"of the agreement. The effect of such a principle would be a mis-
"chievous abridgement of legislative power over subjects within the
"proper jurisdiction of states, by arresting their power to repeal
"or modify such laws with respect to existing contracts."

Possibly a brief digression may be permitted to inquire whether in this case it is admissible to suppose that self-destruction of the insured can fairly be regarded as within the contemplation of the parties to the contract of insurance, and whether there is any just basis for holding that by this contract taken in connection with the Missouri statute, the insured acquired a vested right to kill himself?

It cannot be maintained that the statute in question was written into the contract.

Suppose a party taking a policy precisely like that in suit while this statute was in effect had further stipulated therein by writing and under his seal that the contract should be read, con-

strued and enforced as it was written in spite of the statute, and that the insured expressly waived all right for himself and for all claiming under the policy to seek or take any benefit or advantage of this statute. Such a covenant would be clearly bad upon the principle laid down by Story that the laws act upon the contracts of parties whatever may be their intention. This contract would be invalid simply because it would be contrary to the policy of the state. A contract precisely like that in suit with the statute in question written into it, if in fact there were no statute, would be an insensible contract, contradictory and conflicting in terms. It loses this character and becomes susceptible of ready interpretation because the statute operates externally upon the court and the parties. It prohibits a defense which, on the facts stipulated, the parties had sought to secure for the company by the terms of their contract. The statute is wholly extrinsic to the contract and independent of it; written into the contract and treated as pact and not as law, it might be modified by other provisions of the contract inconsistent with or expressly repugnant to it; operating as law, no matter what the terms of the contract, the statute is paramount and controlling because the sovereign so declares. This question is one of power; it pertains not strictly to the domain of contract law at all but to the power of police which the state possesses. It is as precisely and certainly a question pertaining to the public policy of the state as are questions arising under the laws against usury.

The opinion of the Court of Appeals proceeds upon the theory that the question presented stands precisely as it would had the policy contained a stipulation in the language of the statute. The fallacy of this view is clearly demonstrated by the language quoted from Marshall and Story. The theory adopted by the

court necessarily involves this as its basis; that if the legislature of Missouri after the policy in suit was issued, but long prior to the death of the insured, had passed a statute expressly repealing the act of 1879 referred to as Section 5855 of the Revised Statutes of Missouri for 1889, and explicitly declaring that all contracts of insurance stipulating that the insured and not the insurer should take the risk of his self-destruction, whether sane or insane, should be valid and effectual, and should be read precisely as written whether entered into before or after the adoption of such repealing statute, such act would be entirely unconstitutional as beyond legislative power.

On this point the position of the court is that the policy of insurance became effective when it was issued precisely as if it contained a stipulation directly contrary to the so-called suicide clause, which it actually contained, and that such a subsequent statute, as it would materially affect the rights of the parties to this contract, must be regarded as impairing its obligation within the meaning of the constitutional prohibition. This view fails to note the distinction repeatedly pointed out by this court between legislation which simply relieves a contract otherwise valid from some illegality fastened upon it by prior legislation, thus permitting the contract of the parties to be enforced as they have expressly agreed it should be; and legislation by which rights, secured by a contract entered into freely and voluntarily by the parties, are sought to be affected or impaired by the arbitrary exercise of legislative power.

Now, what was the precise language of the Statute of Missouri in question? It was this:

"In all suits upon policies of insurance on life hereafter issued "by any company doing business in this state it shall be no defense "that the insured committed suicide unless it shall be shown to the

"satisfaction of the court or jury trying the case that the insured "contemplated suicide at the time he made his application for the "policy and any stipulation in the policy to the contrary shall be "void."

The learned court below attaches much importance to the concluding words of this statute declaring any such stipulation void; but the court will notice that this was essentially a statute prohibiting a defense, and thus apparently not aimed primarily at the contract, but dealing rather with procedure when legal remedy upon it should be sought. The provision that any such stipulation should be void, taken in the connection in which it is used, amounts to nothing more than a legislative declaration, that so far as was necessary to secure the object of the statute, namely, the exclusion of a particular defense, a stipulation attempting to secure it should, for that purpose, be regarded as ineffective.

No time will be spent upon that vexed question, as to which the reports abound in profitless discussion; as to when "void" means "voidable."

The decisions of this court upon questions closely related to that here involved are so instructive that they may be safely relied upon for the determination of this case, and unless they have been most seriously misapprehended they are sufficient to demonstrate that upon an important question of constitutional law the learned court below fell into grave error.

A similar question arose in the case of *Whitewater Valley Canal Co.* v. *Vallette*, 21 Howard, 414. It was contended in that case that a certain agreement and bonds executed by the plaintiff in error were invalid under the laws of the State of Indiana, where the transactions arose. After they were entered into, the legislature of that state passed a special act validating these bonds. This court sustained that act. Mr. Justice CAMPBELL observed:

"The objection that the contract was illegal and that no judg-"ment can, therefore, be rendered upon it is not allowed from "any consideration of favor to those who allege it. The courts "from public considerations refuse their aid to enforce obligations "which contravene the laws or policy of the state. When the leg-"islature relieves a contract from the imputation of illegality "neither of the parties to the contract are in a condition to insist "on this objection."

The same ruling was made in another case, *City of Little Rock* v. *The Merchants Bank*, 8 Otto, 308. It was there contended that certain obligations of the City of Little Rock were illegal and hence invalid on the ground that they had been given to take up obligations for the debts of the city issued in illegal form as bank notes. It would appear from the statement of facts that after the illegal notes had been issued by the city and after the bonds to take them up were issued, the statutes of the state rendering such notes illegal had been repealed, and upon this point the Court remarked:

"So where the consideration of a contract declared void by "statute is morally good a repeal of the statute will validate the con-"tract.

Washburne v. *Franklin*, 35 Barb., 599.

"If the act of Dec. 14th, 1875, repealed the restraining laws ab-"solutely as to cities, which we do not decide, the notes first issued "by the city were valid from that time."

In *Ewell* v. *Daggs*, 108 U. S., 142, a statute of Texas provided:

"That all contracts or instruments of writing whatsoever, "which may in any way, directly or indirectly, violate the fore-"going provisions of this act by stipulating for, allowing, or re-"ceiving a greater premium or rate of interest than 12 per cent. "per annum for the loan, payment, or delivery of any money, goods, "wares, or merchandise, bonds, notes of hand, or any commodity, "*shall be void and of no effect* for the whole premium or rate of

"interest only; but the principal sum of money or the value of the "goods, wares, merchandise, bonds, notes of hand, or commodity "may be received and recovered."

Usury statutes were abolished by a subsequent constitutional amendment. It was claimed by the appellant that, notwithstanding this repeal of the usury laws, the rights of the parties were to be determined according to the law in force at the time the transaction took place; that by the terms of that law the contract between Daggs and Ewell was void as to the entire interest reserved and paid; that no subsequent law could make valid a contract originally void.

After discussing the use of the word "void" and its effect in various instruments, the court said:

"All that can be meant by the term, according to any legal "usage, is that a court of law will not lend its aid to enforce the "performance of a contract which appears to have been entered "into by both the contracting parties for the express purpose of carrying into effect that which is prohibited by the law of the land. "(Broom, Leg. Max., 732.)

"And Lord Mansfield, in *Holman* v. *Johnson*, Cowp., 343, "stated the ground on which, in such cases, courts proceed. He "said: 'The principle of public policy is this, *ex dolo mala* (*sic*) "*non oritur actio*. No court will lend its aid to a man who founds "his cause of action upon an immoral or an illegal act. If from "the plaintiff's own stating, or otherwise, the cause of action appear to arise *ex turpi causa*, or the transgression of a positive law "of this country, then the court says he has no right to be assisted. "It is upon that ground the court goes, not for the sake of the defendant, but because they will not lend their aid to such a "plaintiff.'"

The court proceeds to make a distinction between acts which are *mala in se* and those which are *mala prohibita*. The making

of the contract here in question in so far as it relates to self-destruction is at most only prohibited by statute.

In the cases cited below in which it was held that the statute became a part of the contract, not one was cited in which the statute was repealed before the case arose in which the statute was invoked. The question was whether provisions of statutes presumed to be enacted in the public interest could be waived by the parties to the contract. There is no authority for the position that such a statute prohibiting certain defenses becomes a part of the contract which may not be disturbed by a subsequent law.

As for the usury statute of Texas being a penal statute, it was so held, incidentally; but the court, after discussing this feature, said:

"Independent of the nature of the forfeiture as a penalty, "which is taken away by a repeal of the act, the more general and "deeper principle on which they (the decisions on penalties) are "to be supported is, that the right of a defendant to avoid his con-"tract is given to him by statute, for purposes of its own, and not "because it affects the merits of his obligation; and that whatever "the statute gives, under such circumstances, as long as it remains "*in fieri*, and not realized by having passed into a completed trans-"action, may, by a subsequent statute, be taken away. It is a priv-"ilege that belongs to the remedy, and forms no element in the rights "that inhere in the contract. The benefit which he has received "as the consideration of the contract, which, contrary to law, he "actually made, is just ground for imposing upon him, by subse-"quent legislation, the liability which he intended to incur. That "principle has been repeatedly announced and acted upon by this "court. *Read* v. *Plattsmouth*, decided at the present term (*ante*, "208.) And see *Lewis* v. *McElrain*, 16 Ohio, 347; *Johnson* v. "*Bentley*, *id.*, 97; *Trustees* v. *McCaughey*, 2 Ohio St., 155; *Sal-*

"*terlee* v. *Mathewson*, 16 Serg. & R., 169; 2 Pet., 380; *Watson* "v. *Mercer*, 8 Pet., 88.

"The right which the curative or repealing act takes away in "such a case is the right in the party to avoid his contract, a naked "legal right which it is usually unjust to insist upon, and which no "constitutional provision was ever designed to protect. Cooley, "Const. Lim., 378, and cases cited."

In what, then, does this case differ from that case? The statute (Sec. 5855) operated, if at all, in suits upon certain classes of private contracts not immoral in themselves considered, and prohibited one party from making a certain defense, declaring the illegality of any stipulation therefor; the usury statute operated upon private contracts and "enabled the parties to resist a recovery." The respective statutes provided that the parts of such contracts which were in violation of the statute should be "*void and of no effect*," or "*void*."

In the case of *Satterlee* v. *Mathewson*, 2 Pet., 380, a Pennsylvania statute, passed in 1826, provided that deeds of *femes covert* which had been held to be invalid because of the lack of conformity to the statute under which they purported to be made, should no longer be invalid, and in discussing whether this statute impaired the obligation of the contract the court said:

"It is not easy to see how a law which gives validity to a void "contract can be said to impair the obligation of that contract. "Should a statute declare, contrary to general principles of law, "that contracts founded upon an illegal or immoral consideration, "whether in existence at the time of passing the statute, or which "might hereafter be entered into, should nevertheless be valid and "binding upon the parties, all would admit the retrospective char- "acter of such a statute, and that the effect of it was to create "a contract between parties where none had previously existed. "But it surely cannot be contended that to create a contract or to "destroy or impair one mean the same thing."

In *Watson* v. *Mercer*, 8 Peters, 88, in discussing the same statute of 1826, Mr. Justice STORY said:

"So far, then, as it has any legal operation it goes to confirm "and not to impair the contract of the *femes covert*. It gives the "very effect to their acts and contracts which they intended to give, "and which from mistake or accident has not been effected."

Satterlee v. *Mathewson* is then cited as settling the question.

In the case of *Austin* v. *Burgess*, 34 Wis., 156, decided before *Ewell* v. *Daggs*, *supra*, the Supreme Court of Wisconsin, in discussing a statute repealing a usury law, criticised the language of this court in *Satterlee* v. *Mathewson*, and adopted an adverse view; and there are other cases of like import; but the law of this jurisdiction is settled by the decisions of this court in the cases cited herein.

In *Gross* v. *Mortgage Co.*, 108 U. S., 497, it appeared that the act of April 9, 1875, of Illinois, permitted foreign corporations to loan money in Illinois and take mortgages as security, which was prohibited by the general incorporation act of 1872, the language of which is as follows:

"Foreign corporations, and the officers and agents thereof, doing "business in his state, shall be subjected to all the liabilities, re- "strictions and duties that are or may be imposed upon corporations "of like character organized under the general laws of this state, and "shall have no other or greater powers. And no foreign or domestic "corporation, established or maintained in any way for the pe- "cuniary profits of its stockholders or members, shall purchase or "hold real estate in this state, except as provided for in this act."

In passing upon the contention of the plaintiff in error that the mortgage was invalid under the law in force at the time of its execution this court said:

"That the act in question is not repugnant to the constitution, "as impairing the obligation of a contract, is, in view of the settled

"doctrines of this court, entirely clear. Its original invalidity "was placed by the court below upon the ground that the statutes "and public policy of Illinois forbade a foreign corporation from "taking a mortgage upon real property in that state to secure a loan "of money. Whether that inhibition should be withdrawn was, so "far, at least, as the immediate parties to the contract were con- "cerned, a question of policy rather than of constitutional power. "When the legislative department removed the inhibition imposed, "as well by statute as by the public policy of the state, upon the "execution of a contract like this, it cannot be said that such legis- "lation, although retrospective in its operation, impaired the obli- "gation of the contract. It rather enables the parties to enforce the "contract which they intended to make. It is, in effect, a legislat- "ive declaration that the mortgagor shall not, in a suit to enforce the "lien given by the mortgage, shield himself behind any statutory "prohibition or public policy which prevented the mortgagee, at the "date of the mortgage, from taking the title which was intended "to be passed as security for the mortgage debt. We repeat here "what was said in *Satterlee* v. *Mathewson*, 2 Pet., 412, and, in sub- "stance, in *Watson* v. *Mercer*, 8 Pet., 110, that 'it is not easy to "perceive how a law, which gives validity to a void contract, can "be said to impair the obligation of that contract.'"

When the same case was once before the Supreme Court of Illinois, before it came to this court, that court said:

"Unless there be a constitutional inhibition, a legislature has "power, when it interferes with no vested right, to enact retro- "spective statutes to validate invalid contracts or to ratify and "confirm any act it might lawfully have authorized in the first in- "stance. We do not deem it necessary to cite any of the many "cases where this doctrine has been announced or followed.

"In Cooley's Constitutional Limitations, p. 374, it is said: "'When such acts go no further than to bind a party by a contract "which he has attempted to enter into, but which was invalid by "reason of some personal inability on his part to make it, or "through neglect of some legal formality, or in consequence of

some ingredient in the contract forbidden by law, the question they suggest is one of policy and not one of constitutional power.' "

U. S. Mortgage Co. v. *Gross et al.*, 93 Ill., 483, 494.

There are other cases to the same effect.

In *Rosenplanter* v. *Prov. Sav. Life Soc.*, 96 Fed., 721, decided by the Circuit Court of Appeals for the Sixth Circuit, a term policy was issued in 1889 for the term of one year, renewable during life upon certain conditions. The contract was a New York contract, and at the time of its execution, the following statute, passed in 1877, was in force:

" No life insurance company doing business in this state shall "have power to declare forfeited or lapsed any policy hereafter is- "sued or renewed by reason of non-payment of any annual premium "or interest, or any portion thereof, except as hereinafter provided. "Whenever any premium or interest due upon any policy shall "remain unpaid when due, a written or printed notice stating the "amount of such premium or interest due on said policy, the place "where said premium or interest should be paid, and the person "to whom the same is payable, shall be duly addressed and mailed "to the person whose life is assured."

Before his death the insured was in default for several payments which, according to its terms, terminated the policy. It was decided that the notices required by the statute had not been sent, and that " the effect of the prohibition against declaring a " forfeiture of the insurance under the terms of the contract was " to keep the policy alive, notwithstanding the stipulation of the " parties to the contrary."

But by a subsequent act passed and in force before the death of the insured, and before default on the last premium due, the above non-forfeiture law was repealed and a similar statute was passed, providing for notice before a forfeiture could exist, but excepting from its provisions term policies such as the one in suit.

The contention was made that the prior statute had "become so incorporated into the contract as to become a part of the contract itself, and that the provisions of the act of 1877 prohibiting a forfeiture of the interest of the insured in the policy without a notice, according to the terms and conditions of the statute became as much a term and stipulation of the policy as if inserted therein by the parties themselves," and that any repeal or alteration of the act of 1877 "so as to subject the contract to forfeiture without the statutory notice would impair the obligation of the contract." But the learned court, speaking by Judge LURTON, said:

"To this we cannot agree. The contract which the parties "themselves made was one for an insurance for a single year, with "the privilege of renewal for succeeding years upon condition of "the payment of an additional premium upon the day named in "the policy. Failure to renew it according to the condition of the "contract put an end to the policy without more ado. So with re"spect to the payment of the second half of the yearly premium. If "not paid when due, the contract was thereby terminated. The "act of 1877 interposed, and for the benefit of the insured provided "that the stipulation of the contract in respect to the termination of "the policy should not be enforced unless notice of a certain char"acter had previously been given by the insurer. The statute did "not provide that the interest of the insured shall not be forfeited "upon failure to renew the policy by the payment of the stipulated "premium, but that the forfeiture should not be declared or be "effective unless the default in the payment of the stipulated pre"mium should occur after a particular notice had been given prior "to the stipulated day of payment, or a default should continue "after a particular notice and demand for payment had been given. "Thus the law stepped in, and in effect said: 'You shall not en"force the stipulations into which you have entered in respect to "the effect of a default in payment of premiums, unless you first "comply with this statute by giving the notice herein required.'

"The subsequent repeal of this statute does not impair the obliga-"tion of the contract in respect to premiums which should mature "thereafter. The laws with reference to which the parties must "be assumed to have contracted, * * * were those which, in their "direct or necessary legal operation, controlled or affected the "obligations of such contract.' *Insurance Co.* v. *Cushman*, 108 "U. S., 51-65, 2 Sup. Ct., 236; *Ewell* v. *Daggs*, 108 U. S., 143, 2 "Sup. Ct., 408; *Gross* v. *Mortgage Co.*, 108 U. S., 477, 2 Sup. Ct., "940; *Butler* v. *Association*, 97 Tenn., 679, 37 S. W., 385; *Cur-"tis* v. *Leavitt*, 15 N. Y., 15, 85; *Lewis* v. *McElvain*, 16 Ohio, "347; *Trustees* v. *McCaughy*, 2 Ohio St., 152; Cooley, Const. "Lim., side pages 293-378."

Judge Hammond, who heard that case below, very admirably answered the argument that the act of 1877 so entered into the contract as to make its repeal an impairment of its obligation, by saying:

"'If the provisions of the statutes as to notice had been written "in the policy as agreements of the parties, that would have been "their contract, and, of course, the law could not make another "contract for them. Wherefore, it would be enforced by the courts "as the agreement of the parties; but the statute did not under-"take to make a contract of insurance for the parties. It was only "a statutory regulation for the government of insurance com-"panies, compelling them to give notice as required by the act, "of the non-payment of premiums before they would be allowed to "declare a policy forfeited according to its stipulations. It was a "regulation that the legislature had a right to make. It was a "beneficent regulation for relief against a forfeiture created "under the contract, which it was entirely competent for the legis-"lature to withdraw, alter or amend, as to it might seem best.'"

So, in this case, the suicide statute was a statutory regulation for the government of insurance companies, controlling the procedure in suits upon contracts within the competency of the parties, and prohibiting a certain defense, in such suits, when they

were brought. The subsequent repeal of this statute as to assessment companies did not impair the obligation of the contract, but on the contrary, the act of 1887 permitted the contract to take effect as it was originally made, without reference to the suicide statute.

The case of *Phenix Insurance Co.* v. *Pollard*, 63 Miss., 641, presents a similar question. Section 589 of the Mississippi Code of 1880 provided for certain license taxes on various kinds of business and further provided that "all contracts made with any "person who shall violate this act, in reference to the business car- "ried on in disregard of this law, shall be null and void so far only "as such person shall base any claim upon them, and no suit shall "be maintainable in favor of such person on any such contract." The plaintiff had a contract of insurance on her property against fire. She had not paid the tax required by the statute. The property had burned and she sued to recover. The defendant set up the statute, to which defense the plaintiff demurred on the ground that the contract did not come within the terms of the statute, but the Supreme Court held that it did. Shortly thereafter, the legislature passed an act providing that if any person had failed to pay the privilege tax and that if such person would pay to the proper official the tax for the preceding three years he would thereby be relieved of all the pains and penalties imposed by Section 589, *supra*, and providing also that all contracts made by such persons at any time prior to the passage of the act "shall become enforceable as other contracts in the proper courts, whether suit be now pending or not." The defendant in the case attacked the statute and very exhaustive briefs were filed on both sides.

In discussing the question the court said:

"It is retroactive, but it is not on that account unconstitutional,

"since such legislation is not prohibited by the constitution of the "United States or of this state. It cannot be condemned as an in- "vasion by the legislature of the domain of executive or judicial "power, for it is legislative in its character, although it is for the "relief of a class. It is settled by decisions of the Supreme Court "of the United States that such an act is not violative of the consti- "tution of the United States. *Satterlee* v. *Matthewson*, 2 Peters, "380; *Watson* v. *Mercer*, 8 Peters, 88; *Ewell* v. *Daggs*, 108 U. S., "143; *Gross* v. *Mortgage Co.*, *Ib.*, 477; *Campbell* v. *Holt*, 115 "U. S.

"The overwhelming weight of authority in the courts of the "states, whether considered with reference to the number or value "of the decisions, is in favor of the proposition that this act is "not violative of the constitution of the state, and is a valid exercise "of the undoubted power of the legislature.

"We might cite a long list of cases in support of this conclu- "sion and quote largely from them, but it is unnecessray. The "subject is discussed and most of the cases bearing upon it are re- "ferred to in the last edition of Cooley's Constitutional Limitations "under the head of 'Retrospective Laws.' Speaking of the legis- "lative acts validating invalid contracts, this learned author says: "'When these acts go no farther than to bind a party by a contract "which he has attempted to enter into but which was invalid by "reason of some personal inability on his part to make it, or through "neglect of some legal formality, or in consequence of some ingre- "dient in the contract forbidden by law, the question which they "suggest is one of policy and not of constitutional power,' and in "this we concur. The few cases denying this are unsatisfactory, "and proceed, as we think, upon an erroneous view of legislative "authority.

"The state, for purposes of its own, denied to him who vio- "lated its revenue law the right to enforce any contract he made in "reference to the business unlawfully carried on. It was com- "petent for the state to remove the disability it had imposed and "to permit contracts not before enforceable because of this disabil-

"ity to be enforced. The state may not make contracts between in-"dividuals, it is true, but when individuals have themselves made "contracts not enforceable only because of some obstacle the state "has interposed, the power which created the barrier may remove "it at any time before it has become *res judicata* between the par-"ties. Until then there cannot be said to be a vested right beyond "the reach of legislative interference."

It is true that in some of the cases cited the entire contract in question was ineffective by reason of statutory prohibition; while in this case the statute only reached one clause in the contract. Therefore, the court below doubtless regarded this as a case where there was a valid contract to which was attached an invalid proviso; and considered, that to give effect to the latter must necessarily impair the obligation of the contract as it would have read without the proviso.

But in this the learned court fell into radical error. A careful study of *Ogden* v. *Saunders*, in connection with the powerful and luminous argument submitted by Webster in that case, will establish that the obligation of contracts protected by the constitutional provision is the obligation arising from the voluntary engagement of the parties; and that this protection does not embrace the external incidents added to such compacts by municipal law. It may be conceded that had the parties distinctly stipulated that self-destruction should be no defense, a subsequent statute declaring that it should be, would be beyond legislative power. But their stipulation is to the contrary. That it fails of effect is due solely to the compulsion of the statute. When that is withdrawn the obligation of the contract into which the parties entered is in nowise impaired; on the contrary, it is then fully recognized exactly as the language employed imports. The repealing act only alters the contract as it relieves it from the effect of the earlier

statute. This is not at all to impair its obligation within the meaning of the constitutional prohibition.

That this view is the true one seems to follow from the decision of this court in *Ewell* v. *Daggs*, and the decision of the Circuit Court of Appeals of the Sixth Circuit in *Rosenplanter* v. *Provident Savings Life Soc.* In each of these cases the repealing statute was sustained, although the result was thus to alter the contract in question by relieving one of its provisions from the effect of a prior prohibitive statute.

It is true the constitution of Missouri prohibits retrospective legislation. But this statute is not, in that sense, retrospective.

In *Shields* v. *Clifton Hill Land Co.*, 94 Tenn., 123, it appeared that Chapter 142 of the Act of 1875 (Tenn.) requires the acknowledgment of a corporate charter to be taken before a clerk of the county court and forbids it to be taken before any other official. The Act of March 10, 1890, validates all charters previously acknowledged before a Notary Public and gives them force as if acknowledged by a clerk of the county court. Certain parties had prosecuted to final judgment an action to enforce their lien against a corporation whose charter was acknowledged before a Notary Public and desired to assert the personal liability of the incorporators on the ground that their charter was originally invalid. The constitutional provision in Tennessee is "that no "retrospective law, or law impairing the obligation of contracts, "shall be made." (Const. Tenn., Art. 1, Sec. 20). The court says:

"This does not mean that absolutely no retrospective law shall "be made, but only that no retrospective law which impairs the "obligation of contracts, or divests or impairs vested rights, shall be "made. *Townsend* v. *Townsend*, Peck, 15, 17; *Wynne* v. *Wynne*,

"2 Swan., 405; *Collins* v. *Railroad Co.*, 9 Heisk., 847. It does "not inhibit retrospective laws made in furtherance of the police "power of the state; and, generally, it does not prohibit remedial "legislation, nor stand in the way of statutes passed to cure some "defect or omission in former proceedings or enactments, or in the "case of parties attempting to comply therewith. *Marr* v. *Bank*, "4 Lea, 585; *Corporation of Knoxville* v. *Bird*, 12 Lea, 121; "*Demoville* v. *Davidson Co.*, 87 Tenn., 223; *Munn* v. *Illinois*, "94 U. S., 113; *Beer Co.* v. *Massachusetts*, 97 U. S., 25; *Stone* "v. *Mississippi*, 101 U. S., 814; Wade, Retro. Law., Sec. 23, 257; "1 Kent, Comm., p. 456; 2 Story, Const., 674; Cooley, Const. Lim. "(5th ed.), 443, 448, 455, 458; *Ewell* v. *Daggs*, 108 U. S., 150, "151, 2 Sup. Ct., 408; *Gross* v. *Mortgage Co.*, 108 U. S., 488, 2 "Sup. Ct., 940; *Satterlee* v. *Matthewson*, 2 Pet., 412; Suth. St. "Const., Sec. 206, 207."

It remains only to add a few words as to the Act of 1897, by which it was attempted to impose upon assessment companies the provisions of Section 5855, which is the so-called suicide statute.

This act is unconstitutional in this regard, on account of its title; and so doubtless the Court of Appeals regarded it.

Section 28, Article IV, Constitution of Missouri, referring to this matter, is as follows:

"No bill (except appropriation bills * * * etc.) shall "contain more than one subject, which shall be clearly expressed "in its title."

The history of this Act of 1897 in its relation to Section 5855 is instructive. It was entitled: "**An Act to repeal Section 5869** of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance Companies on the Assessment Plan' and to enact a new section in lieu thereof and designated as Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, *relating to*

statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defence thereon, for such misrepresentations;" and was first introduced in the Senate January 18, 1897, by Senator Major, providing for a section as follows:

"Section 5869. Every corporation doing business under this article shall annually, on or before the 1st day of February, return to the superintendent of the insurance department, in such manner and form as he shall prescribe, a statement of its affairs, for the year ending on the preceding 31st day of December, and the said superintendent in person or by deputy shall have the power of visitation of and examination into the affairs of such corporation, which are conferred upon him in the case of life insurance companies by the laws of this state; and all such foreign companies are hereby declared to be subject to and required to conform to the provisions of Sections 5912, 5849 and 5850 of the Revised Statutes of Missouri of 1889, and governed and controlled by all the provisions in said section contained; provided always, that nothing herein contained shall subject any corporation doing business under this article to any other provisions or requirements of the general insurance laws of this state, except as distinctly herein set forth and provided."

This is identical with the law as it now stands, with the important exception that the figures "5855" between the word "sections" and the figures "5912" were not then a part of it. The bill was read and ordered printed. On Monday, January 25, 1897, the bill was referred to the committee on insurance. On Friday, January 29, 1897,

"Senator Childers, from the committee on insurance and insurance companies, submitted the following report, which was read:

"Mr. President: Your committee on insurance and insurance companies, to which was referred Senate Bill No. 105, entitled: 'An Act to repeal Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, entitled 'Insurance Companies on the Assessment Plan' and to enact a new section in lieu thereof and designated as Section 5869 of Article 3 of Chapter 89 of the Revised Statutes of Missouri of 1889, relating to statement of affairs of assessment insurance companies and misrepresentations made in securing a policy of insurance, and defense thereon, for such misrepresentation,' begs leave to report that it has examined the same and recommends that it do pass with the accompanying amendment:

"Amend Senate Bill No. 105 by inserting between the word 'section' and the figures '5912' in the 28th line of said original Senate bill, the figures '5855.' Which was read first and second times and adopted."

The bill, as amended, after going through the necessary course, was passed by the Senate on February 4, 1897, by a vote of 18 in the affirmative and 11 in the negative, and thence it went through the regular and customary channels until it was approved March 15, 1897, by Governor Stephens.

A careful examination of the journals of the Senate and House of Missouri in 1897 does not reveal the use of the word suicide in connection with this bill, and the title of the act does not mention it. The figures relating to suicide were inserted by amendment merely as "figures," and there was no attempt to enlarge the title of the act to cover the important addition referred to by these "figures." In view of this method of procedure the act, in so far as "5855" is concerned, is not only subject to the objection that it violates Sec. 28 of Art. IV, set forth above, but it also violates Sec. 25 of Article IV of the Constitution of Missouri, as follows:

"Art. 4, Sec. 25. No law shall be passed except by bill and no "bill shall be so amended in its passage through either house as to "change its original purpose."

in that the amendment adding the figures "5855" enlarged and so changed the purpose of the original act, which was limited to the purpose set forth in the title.

It is not enough that the act embrace but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act.

Sutherland Stat. Const., 887.
City of Kansas v. *Payne*, 71 Mo., 495.
Mewherter v. *Price*, 11 Ind., 201.
Ryerson v. *Utley*, 16 Mich., 269.
Dorsey's Appeal, 72 Pa. St., 192.
Knoxville v. *Lewis*, 12 Lea, 180.
Stiefel v. *Md. Inst.*, 61 Md., 144.
Town v. *Fishkill*, 22 Barb., 634.
Graves v. *Trustees*, 45 N. J. L., 399.
Shivers v. *Newton*, 45 N. J. L., 469.
Cooley's Const. L., 6 ed., 179.
Greaton v. *Griffin*, 4 Abb. Pr. (No.), 310.

The whole act can be valid only when the subject stated includes all the provisions in the body of the act.

Mete v. *Robinson*, 69 Ala., 413.
Ex Parte Pollard, 40 Ala., 99.
Graves v. *Trustees*, 45 N. J. L., 399.
Shivers v. *Newton*, 45 N. J. L., 469.
Ryerson v. *Utley*, 16 Mich., 269.

When the title of the act is specific, the act must not include

matters not specified, though they be of the same general character.

Taylor v. *Kirby*, 31 Ill. App., 657, 659.
W. C. St. Ry. v. *Lake View*, 105 Ill., 207, 213.
People v. *Mellen*, 32 Ill., 181, 182.

This question passed *sub silentio* in the Court of Appeals. Apparently that court regarded this contention for the insurance company as sound. For the case was there disposed of upon other questions which would not have been presented had the Act of 1897 been efficient to impose the provisions of Section 5855 upon assessment companies.

II.

The so-called suicide statute applies only where the insured commits suicide; it is inapplicable where, as in this case, he takes his own life while insane and incapable of comprehending the nature of his act.

The petitioner upon this point might perhaps be justified in relying upon the dissenting opinion of Judge Sanborn, where the matter is very clearly put. But possibly a brief statement with some reference to cases may be admissible.

Section 6570, Revised Statutes of Missouri, 1889, referring to the construction of statutes, provides that "words and phrases "shall be taken in their plain, ordinary and usual sense, but tech- "nical words and phrases, having a peculiar and appropriate "meaning in law, shall be understood according to their tech- "nical import." How shall we determine the "*plain, ordinary "and usual sense*" of words and phrases within the meaning of this statute? The meaning placed upon this part of Section

6570 by the Supreme Court of Missouri will be binding upon this court.

In *State* v. *Pagels*, 92 Mo., 309, where the question was the qualifications of a juror, the word "*citizen*" was construed in its "plain, ordinary and usual sense" as "one entitled to vote," the definition being derived from Section 2, Article VIII., Missouri Constitution of 1875.

In *State* v. *Jones*, 102 Mo., 307, the word "by-stander" as used in a statute requiring a bill of exceptions in a certain contingency to be signed by "three by-standers," is held to mean "one who stands near; one who has no concern with the business "transacting," citing Webster's Dictionary. It is also here said that words and phrases shall be taken in their "plain, ordinary "and usual sense," as provided by the statute.

In *State ex rel. Withers* v. *Stonestreet*, 99 Mo., 371, the word "term" as used in the phrase "term of office" is defined in its "plain, ordinary and usual sense" as meaning "the time for "which anything lasts"; "any limited time"; citing Webster's Dictionary.

In *Christian* v. *Insurance Company*, 143 Mo., 460, 466, it is held that the word "contemplated" in Section 5855, now under consideration, means "intended." The authority cited for this interpretation is *Insurance Company* v. *Florida*, 32 U. S. App., 753; 69 Fed., 932, 936, where the court below held by THAYER, Judge, that the word "intended" is a synonym of the word "contemplated," and cited several cases. This interpretation is followed in the *Christian* case.

In *State ex rel., etc.*, v. *Perkins*, 139 Mo., 115, the court in determining the "ordinary and usual meaning" of the word "until," refers to "the ordinary meaning of the term as it has

"been expressly adjudicated," and proceeds to cite judicial authorities.

In *State* v. *Gibson*, 11 Mo., 92, 96, in determining the meaning of the word "concubinage" as used in a criminal statute, the court says:

"If, as we take it, the word employed is to be taken in its "'ordinary sense' in the popular acceptation of the term, we must "turn to the standards of our language in order to ascertain the ac-"cepted meaning of the term."

The court proceeds to cite the meanings given by Webster's Dictionary.

In each of the foregoing cases the court, in determining the "plain, ordinary and usual meaning" of words as used in various statutes, has referred either to Webster's Dictionary or to judicial authorities to determine such meaning. The "plain, "ordinary and usual sense" of a word as used in the statute must then be gathered, according to the rule of the Supreme Court of Missouri, from such standard authorities as Webster and from judicial decisions, if the word or phrase has been defined by the latter authorities. What, then, is the meaning of the phrase, "commit suicide," in its "plain, ordinary and usual sense," as it may be gathered from these authorities?

The definitions of the dictionaries are as follows:

"Suicide"—"The act of taking one's life, voluntarily and in-"tentionally; self-murder; specifically (law) the felonious killing "of one's self; the deliberate and intentional destruction of one's "own life by a person of years of discretion and of sound mind; "one guilty of self-murder; a *felo-de-se*." Webster's Dictionary, "1895.

"Suicide—the act of designedly destroying one's life; to com-"mit suicide at common law, the person must be of years of dis-"cretion and of sound mind." Century Dictionary.

"Suicide—the act of one who designedly kills himself; the "voluntary taking away of one's own life; self-slaughter; self-"murder; self-homicide; one who deliberately and intentionally "kills himself; one who commits self-slaughter. In law, suicide "is the deliberate and intentional destruction of one's self by a "person of years of discretion, and in his senses. Self-slaughter "by an insane man or a lunatic is not an act of suicide within the "meaning of the law. (Burrill.) Up to the middle of the seven-"teenth century our good writers used self-homicide, never suicide." "Worcester's Dictionary.

Adopting the method of the Supreme Court of Missouri for determining the "plain, ordinary and usual sense" of words and phrases, we find no standard authority for a meaning of the phrase "commit suicide" which includes the act of one "insane "to such an extent as to be incapable of understanding the nature "or consequences of his act." If the words are to be taken in their "plain, ordinary and usual sense," they must be limited to acts which are voluntarily and intentionally committed by one "who understands the moral character, general nature, conse-"quences and effect of his act." In this case, however, it should be remembered that the words "commit suicide" in section 5855 were used in relation to the subject of insurance, in which connection they had acquired a well-understood and accepted meaning. In applying them to insurance companies, the legislature will be presumed to have used them in just the sense that they would be used by such a company in its policies. "We must "understand and interpret the words used by the legislature in "reference to the context and subject-matter."

Ruggles v. *Washington County*, 3 Mo., 496.

III.

The learned court below, conceding that the amendments to the company's constitution and by-laws were regularly made and that, if applicable to the policy in question, their effect would be to limit the recovery thereon as contended for the company, held them to be inapplicable because there was nothing to indicate that they were intended to have a retrospective operation.

The language on which the petitioner relies is as follows:

"I further agree, if accepted, to abide by the constitution, rules and regulations of the company as they now are, or may be constitutionally changed hereafter."

104 Fed. Rep., 643.

But no one has suggested that they should operate retrospectively. If by this observation the learned court intends that changes in the constitution of the company shall have no effect as to persons holding policies when such changes are made, it is only necessary to read the language just quoted to see that this view is inadmissible—for the insured agrees to abide by the constitution, rules, etc., as they now are, or may be constitutionally changed hereafter. When changed these provisions will operate prospectively. Those in question in this case, by which finally it was provided that on death of a member his beneficiary should take only the face of the policy, could not operate at all until death of the member. Upon a member's death doubtless the right of his beneficiary becomes vested. But what can be plainer than that the clause in question binds the member to any changes made prior to such time as by his death a right in the beneficiary accrues?

Before reviewing the cases which have been decided on this question, it will be well to state that they may be divided into two

classes. In one class there may be placed all those cases in which it appears that the power to amend the contract was reserved in some language such as that which is used above. There is another class of cases in which the question of amendment of by-laws subsequent to issuance of a policy comes up for consideration, and in which it is held that the power as exercised did not affect contracts issued prior thereto; but a careful examination of these cases discloses the assertion therein without exception of the rule, that such an amendment can not be made "without the "express consent of the member," or "unless the power to amend "is reserved." There is a third class of cases in which the principle is asserted that amendments may be made pursuant to a power reserved, but that such amendments shall be reasonable. In the second class of cases it is apparent that if the consent of the member had been given, or the power to amend had been reserved, the changes would have been held valid. In this case the power to amend is reserved, and the agreement or consent of the member to abide by the amendments which are made pursuant to this power is given in advance when he signs his application.

It will be noticed that the validity of the amendment is made to depend upon the terms of the contract itself, and that when there is a provision for amendment, and the change is not unreasonable, it is held to be in harmony with the contract and not in violation of it. *Hobbs* v. *Assn.*, 82 Ia., 107.

An early case is that of *Korn* v. *Mutual Assurance Society*, 6 Cranch., 192, decided in this court in 1810, the opinion being written by Mr. Justice Johnson. This was the case of a mutual fire assurance society in which each of the insured agreed to "pay the losses and expenses, each his share according to the sum "insured."

The court say:

"The liability of the members of this institution is of a two-
"fold nature; it results both from an obligation to conform to
"the laws of their own making as members of the body politic,
"and from a particular assumption or declaration which every
"individual signs on becoming a member; the latter is remarkably
"comprehensive—'and we will abide by, observe and adhere to
"'the constitution, rules and regulations that are already estab-
"'lished or may hereafter be established by a majority of the in-
"'sured, present in person or by representatives, or by the ma-
"'jority of property insured represented either by the persons
"'themselves or their proxy duly authorized,' etc. It would be
"difficult to find words of more extensive signification than these,
"or better calculated to aid, explain and enforce the general prin-
"ciple that the majority of a corporate body must have power
"to bind its individuals. It is true that the words of this declara-
"tion, as well as the general power of a corporate body, must be
"restricted by the nature and object of the institution. But apply
"this rule to the case before us and it can not avail the plaintiffs,
"for both the rule which suspends the security and the alteration
"made in its constitution under a vote of the majority are strictly
"conformable to the general objects for which the company was
"constituted."

The court further say:

"As to what is contended to be a material alteration of their
"charter, we consider it merely as a new arrangement and dis-
"tribution of their funds, and whether just or unjust, reasonable
"or unreasonable, beneficial or otherwise, to all concerned, is a
"matter of speculation proper for the consideration of the society,
"of which no individual is at liberty to complain, and, as made,
"is bound to consider his own individual act. Every member in
"fact stands in the peculiar situation of being party to both sides,
"insurer and insured. Certainly the general submission which
"they have signed will cover their liability to submit to this alter-
"ation."

One of the most recent cases in which the subject has been considered is *Fullenwider* v. *Royal League,* 73 Ill. App., 321, decided January 27, 1898, affirmed in Supreme Court, 180 Ill., 621. This was a case of a member of a mutual benefit society who sought to enjoin it from collecting an assessment which had been increased pursuant to a change in the rate of assessments by changing the by-laws governing the subject. In this case the member agreed in the medical examiner's blank that "if accepted as "a member, I agree to comply with, and that my membership "and all interests of the person entitled to such benefits shall be "subject to all laws, rules and usages now in force in the order, "or which may hereafter be adopted by it," and the benefit certificate was issued upon condition "that the said member com- "plies in future with the laws, rules and regulations now gov- "erning the said council and fund, and that may hereafter be "enacted by the Supreme Council to govern said council and "fund, all of which are also made a part of this contract. These "conditions being especially assented to and complied with." The case was heard fully by Chancellor Murray F. Tuley, who has sat upon the bench in Cook County, Illinois, for more than twenty years. He wrote an exhaustive and careful opinion upon the case, which was adopted *in toto* by the Appellate Court. The change in question involved an increase in rates, and also provided that four per cent. of the assessments should be appropriated to pay expenses, nothing having been taken from assessments for this purpose prior to the change. The court say:

"In making the change in the by-laws and changing the table "of rates, the Supreme Council appears to have proceeded in all "respects in the manner required by the constitution. It also "appears to have acted in good faith in changing the by-laws, and "there appears to be no ground for suspecting any fraud or im- "pure motive as influencing this action.

"This increase of assessment was the result of a change of "policy on the part of the defendant, taken after due deliberation, "upon the recommendation of advisory councils, and after some "years' agitation of the question of increasing the rates and the "creation of a reserve fund in order to put the order upon a "secure financial basis.

"The defendant, in its answer, sets forth at length the consid- "erations that induced and the reasons for this change of policy, "among others, that the experience of the Royal League had "demonstrated the insufficiency of its original table of assess- "ments, and that special assessments had to be called for, which "necessarily produced more or less discontent and injury to the "membership of the order; that the plan and new table of rates "finally adopted was based upon the following propositions, de- "duced from experience and authority: (1) That the cost of in- "surance must be based upon the average age of the membership "of the society or company furnishing the insurance; (2) that "the cost at a given age is determined by reference to certain "standard tables of mortality, which have been adopted as the "basis of computation by all well informed life insurance so- "cieties and by the insurance departments of the several states; "(3) that the increase in the average age of the members of a "fraternal insurance society is inevitable as the order grows "older in years; (4) that the number of assessments necessary "to pay current death losses must inevitably increase in each "such society unless a table of rates be provided which will en- "able the society to collect more money during the early years "of the membership than is necessary to pay death losses, thereby "providing a fund which may be drawn upon in order to avoid "special assessments during the later years of the society; that "the adoption of said new table of rates was the result of deliber- "ate judgment and great care, and that it was justified and even "rendered necessary by the action of other societies organized "and conducted upon the like general plan; that the adoption of "said new table of rates was not only expedient, but that it was

" absolutely necessary to the safety of the society and to the pro-
" tection of its members, and that if said Supreme Council had
" refused to heed the warnings of experience and the demands
" of its advisory bodies, it would have been false to the trust im-
" posed upon it.

" The complainant objects to paying the new rate of assess-
" ment, and seeks an injunction prohibiting the defendant from
" enforcing the call or assessment at the increased rate on the
" ground that the certificate issued to him constitutes a contract
" between himself and the society, by the terms of which no
" assessment can exceed $2.62; that if the defendant had power
" to change the by-laws and increase the rate to be paid, it could
" only be done as to new members and could not have a retro-
" active effect; that the by-law in any view is unreasonable, and
" therefore void. * * *

" The main question is whether the benefit certificate consti-
" tutes a contract which prevents the society from increasing the
" table of rates beyond that set forth in the by-law existing at the
" date of the certificate of membership.

" What was the contract between these parties? The certificate
" standing by itself does not measure the rights of the parties,
" but it must be read in connection with the constitution and by-
" laws of the society and the application for membership.

" The nature, objects and purposes of the society and of the
" Widows' and Orphans' Benefit Fund must also be taken into
" consideration.

" The Statute of 1893, to which the defendant has conformed
" and under which it is being carried on, defines a fraternal
" benevolent society as follows:

" ' A fraternal benevolent society is hereby declared to be a
" corporation, society or association formed, organized and car-
" ried on for the sole benefit of its members and their beneficiaries,
" and not for profit.'

" And further provides:

" ' Each society shall have a lodge system, with ritualistic form

"of work or representative form of government, and may make "a provision for the payment of benefits in case of disability and "death, or of either, resulting from either disease, accident or "old age of its members. The payment of such benefits in all "cases being subject to compliance by the member with the con- "tract, rules and laws of the society.'

"These assessment societies are peculiar in their nature, and "as said in the matter of the *Equitable R. F. Association,* 131 "N. Y., 354, they are neither stock nor exactly mutual insur- "ance companies; they could not be exactly described as such "in all respects.

"The assessments are purely voluntary, and our statutes appear "to recognize the fact in seeming to require that the governing "power shall be representative in its character. The beneficiary "members who constitute the membership of the widows' and "orphans' benefit fund are a purely voluntary association of "members for a definite purpose, to wit: to raise a fund out of "which shall be paid on the death of one of its members, to his "family or persons dependent upon him as directed, the amount "of his insurance if the assessment exceed that amount.

"The underlying idea is that of absolute equalily, equality in "the burden of providing the funds *pro rata* to benefits to be re- "ceived and equality of the benefits to be received *pro rata* the "the burden borne by those contributing to the fund.

"A scheme was devised which the governing body and its mem- "bers believed would provide a sufficient fund to pay all insur- "ance or death losses as they occurred; experience has demon- "strated that it will not do so—the necessity of seeing decreas- "ing membership and possible disruption of the society unless "some change be made was made apparent to the representative "body, the Supreme Council. It resolved to change the by-laws as "to rates by increasing the same: the old members object and "say 'our rates are fixed by the old by-laws; you have power to "increase as to new members, but not as to the old members.'

"To increase the rate as to new members only would be absurd,

"and would be useless; there would be no new members; there "would be no equality, voluntary equality of burden. Can it in "reason be contended that such an absurd position of affairs was "contemplated or was intended either in the organization of the "company or by the parties to the benefit certificate when it was "made? Was it contemplated by the parties to the certificate "that if the assessment rate mentioned in the certificate should "prove ineffectual to raise a fund sufficient to pay death losses, "that the society should go on paying them? Clearly not. Was "it contemplated that in such an event the governing body should "keep on upon the 'old lines' until by loss of members caused "by repeated special assessments, certificates would become value-"less?

"These parties, the beneficiary members and the society, were "not dealing at arm's length making a 'hard and fast' contract, "but they were making a co-operative contract arrangement, with "the good, the interest of the society and fund as much in view "as the interest of the beneficiary member. They had in view "not only the interest of the 'loved ones at home' of the member, "but also the interest of the loved ones at home of all the bene-"ficiary members of the society. Was there not an implied con-"dition that this governing representative body should alter and "change all by-laws that should be necessary to preserve the life "of the society or to accomplish the object and purpose sought "in constituting the Widows' and Orphans' Benefit Fund?

"It is not necessary, however, to imply any such condition, "for here there was an express agreement to be bound not only "by the then constitution and by-laws, but also by any new by-"laws or any change that might be made in the existing by-laws "governing the Widows' and Orphans' Benefit Fund, that the "Supreme Council might deem it necessary to make.

"It will not be denied that the parties had power to contract "with reference to future by-laws or change of by-laws, and if "they did so contract, there is no injustice in enforcing such fu-"ture or changed by-laws against the parties. There is no limi-

"tation that such change of by-laws shall not be made for the "general good of the Widows' and Orphans' Benefit Fund if it "increases the burden of some or all of its members.

"It is contended, however, that the plaintiff has a vested right "under his contract, and that no vested right under the contract "can be impaired by the society.

"As suggested by the court in 82 California, 557, a vested "right to what? It certainly is not a vested right to have the "constitution and by-laws remain forever unchanged, but if it "is a vested right, it is in a contract which gives the Supreme "Council express authority to change the by-laws existing when "the contract was made, and to make and incorporate into the "contract a new by-law or changed by-law. That is what has "been done, and therefore no vested right has been infringed. "Under such a contract no vested right could exist until the "death of the member; then would arise a vested right to have "an assessment made in pursuance of the then existing by-laws, "and the proceeds, not exceeding the limit of insurance, paid "over.

"Upon a death, what was a contract upon a contingency, be- "came a debt and a vested right to its payment. The beneficiary "member is not a creditor to the society, nor has he the right to "claim the benefit of any fund until the event happens upon "which his claim becomes payable, and it must necessarily fol- "low that it shall be subject to the by-laws then governing that "fund. The beneficial certificate holder is only entitled to the "ripened fruits of his contract; if the fruit should wither and "die before maturity, his rights under the contract are gone.

"It must be admitted that there is a conflict of authorities "upon the question as to the right of a society to change by-laws "which will affect a contract of insurance. Among the authori- "ties which seem to oppose it is one in our Appellate Court— "*N. W. Ben. Ass'n* v. *Warner*, 24 Ill. App., Ct., 357; also, *Ins.* "*Co.* v. *Connor*, 17 Pa. State, 135; *Weiler* v. *Equitable Life*,

"92 Hun., 277; *Mutual Endowment Society* v. *Essenden*, 59 "Md., 277.

"In my opinion, these cases are decided upon too 'narrow "lines' and without a full appreciation of the nature, the consti- "tution, objects and purposes of these friendly, co-operative or "assessment societies.

* * * * * * * * *

"As to the objection that the new by-law is unreasonable:

"The new rate appears to have been fixed after mature delib- "eration, and to be the result of the honest judgment of the Su- "preme Council.

"It is not for the court to undertake to say that the rate is too "large or to determine what would be reasonable; that is left by "the law and by the contract of the parties to be determined by the "Supreme Council.

"The law does not contemplate that the court shall interpose "its judgment as against the honest judgment of the governing "body selected by the parties, to determine what would be or "what would not be a reasonable rate of assessment. If there "is any reason for a complaint in this regard, it should be made "to the state auditor, who appears to be entrusted by the Statute "of 1893 with a supervisory power over these friendly societies. "The court can certainly not interfere if the evidence shows, as "it does in this case, that the governing body has acted in good "faith and upon due deliberation."

The cases which are cited by the court as seeming to oppose his view may all be distinguished from the case he decided. In the first, second and fourth it does not appear that there was an agreement to abide by future changes. In the third the decision was that by-laws might be passed pursuant to a reservation, provided they were not unreasonable, but that the by-laws under consideration in that case were not within the objects and purposes of the corporation and were consequently unreasonable.

The similarity of the change in the Royal League case and in the case now before the court is obvious. The effect of the change in the former case was an increase in the burden borne by the policy holder on account of the experience of the society which made it necessary to collect larger amounts on each assessment, or to collect more assessments. The court held the change to be a change of policy, which was decided to be within the discretion of the society, and "to be absolutely necessary for the safety of "the society and the protection of its members, and that if said "Supreme Council had refused to heed the warning of experi-"ence and the demands of its advisory board, it would have been "false to the trust imposed upon it." In the present case the effect of the change upon the policy holder was to decrease the amount of burden which he would have to bear from year to year if the former arrangements continued, and if the changes had not been made he would have had increased burdens to bear, as will be shown hereafter. The principle of the two cases is exactly the same, and if the change is for the protection of the society and for the best interests of its members the fact that one member makes complaint of the change would not relieve him from its binding effect, so long as it operates upon all alike.

The same question which was involved in the case of Fullenwider was decided in a similar case by an executive officer of the Canadian government, who stands high as authority upon fraternal insurance laws.

In the province of Ontario, Canada, the law provides for the inspection and examination of fraternal insurance societies, called, under their system, friendly societies, by an officer whose duties are similar to those of the insurance commissioner of a state. It becomes his duty to examine their plan of doing business, their laws, their table of rates, etc., and if reasonable and proper he

registers the society, which gives it a right to carry on its business. If he finds that the provisions of its laws are contrary to the laws of the country, or inconsistent, unreasonable or unfair, he refuses to register the society, thereby preventing its doing business within the province.

If a society changes its laws, this change is subject to his inspection, and if contrary to law or unreasonable, its right to do business ceases.

This officer is called the registrar of friendly societies.

One of the friendly societies of the Province of Ontario increased its table of rates; this action was protested against by certain of its subordinate bodies, and the question was submitted to J. Howard Hunter, then Registrar, from whose opinion we make the following extracts:

"In the Matter of the Insurance Corporations Act, 1892,
"and the Constitution of the Select Knights of
"Canada.

"Before the Registrar of Friendly Societies.

"In fact, the complainants themselves scarcely venture so far, "'their real objection being not to the altered mode of assess-"ment, but to the retroactive application of the new system to "the old certificates.' And this leads to the second and more "important reason that the complainants urge why the action "of the Grand Legion should be held *ultra vires*, viz.: that the "retroactive application of the new system of assessment is a "breach of the formal contract made by the Select Knights with "the complainants.

"There is no doubt that all the courts, American as well as "British, strongly disfavor any alteration made in an insurance "contract without the consent of the insured.

"But a distinction is made where the contract itself reserves "the insuring corporation the right from time to time to amend

"its rules or by-laws, and binds the assurred to compliance with "such rules or by-laws as shall from time to time be in force. "*Hobbs* v. *Iowa Mutual Benefit Assn.*, 20 Ins. Law Journal, "434; *Becker* v. *Farmers' Mutual Ins. Co.* (Sup. Court Mich.), "1882; 11 Ins. L. J., 595; *Supreme Commandery, etc.*, v. *Ainsworth*. 71 Ala., 436. In the last cited case it was laid down "that where a contract of insurance is issued conditioned that "it shall be subject to such by-laws as may thereafter be enacted "by the society, by-laws subsequently passed became a part of "the contract. Two English cases which were cited by Mr. Mc-"Watt appear to me very much in point: *Stooke* v. *Mutual* "*Provident Alliance* (Q. B. D. Pollock B. and Charles J., "27th January, 1891), reported in the Manchester Unity Col-"lection of Friendly Society cases, 1892, p. 226; and *Dixon* v. "*Thompson* (Q. B. D. Cave Vaughan and Williams, J. J., Janu-"ary 29, 1891), Ibid., p. 259. In the former case the policy "was granted on a proposal (or, as we call it, an application) "in which the applicant agreed to abide by the present rules and "regulations of the society, and by any others that may here-"after be made and certified by the Registrar of Friendly So-"cieties. A new rule was made by which the assurred was, while "on sickness allowance, deprived of all such further benefit. "Baron Pollock could see nothing unreasonable in this where "there was a special stipulation such as that above cited, and "Charles J. held that it was open to the society to raise the dues "or to reduce the benefit. The court came to the conclusion that "as the contract expressly provided that the member should be "bound by rules made from time to time, it could not be said "that the new rules were *ultra vires*. The plaintiff was there-"fore bound by them. The judgment of the County Court and "Judge, therefore, was wrong and must be reversed.

"In *Dixon* v. *Thompson*, also, the question raised involved the "validity of rules altered under a like stipulation, and the court "followed the decision in *Stooke* v. *Mutual Provident Alliance* "affirming the validity of the new rules.

"It is quite true that this right claimed by Friendly Societies "to revise their contracts of insurance is something not met with "in other insurance corporations—is, in short, a seeming anomaly "in the law of contract. But it is to be remembered that Friendly "Societies when first undertaking sickness and disability bene- "fits were venturing into an entirely unoccupied and unexplored "region of insurance, where the proper rates of premiums must "have been mere guesswork and for long years afterwards must "have continued a matter of experiment. It is only in our own "day that such a body of experience has accumulated as to en- "able the managing officers of such societies to say what are "proper rates of premium for the benefits promised. Now, where "a society started out on an erroneous financial basis, and has "begun to feel the strain which an increasing ratio of old mem- "bers brings, it would be extremely serious for the old mem- "bers—now, perhaps, uninsurable elsewhere—if their own society "could not recede from its former error, and amend the rates, "but must helplessly await the collapse. It would, of course, be "better (if at all possible) in amending the rates to avoid retro- "active measures, but sometimes this can not be done. If the "old certificate holder has to pay something more than under "the old rule he is not without compensation, for in his certificate "he now holds an improved security—a better assurance that "the society will be able to fulfill its obligations."

In the case of *Supreme Commandery* v. *Ainsworth*, 71 Ala., 436 (1882), the whole subject is carefully considered. In this case when the policy was issued there was no provision in it against suicide. A subsequent by-law provided that suicide would avoid the policy. A general law of the association provided that every member should "comply with the general laws of the order "then in existence, or which might thereafter be enacted," and the certificate of membership was issued and accepted by him in writing, "subject to the laws of the order now in force, or which "may hereafter be enacted by the Supreme Commandery." Sub-

sequently the above change in the by-laws was made. In deciding the point the court said:

"With a view of excepting from the operation of the policy "any intended self-destruction, whether the assured is sane or "insane at the time of its commission, insurance companies are "in the habit of inserting in policies a provision, the equivalent "of that expressed in the law of the association now under con- "sideration. The exception as to the insane has been supported, "and it is said to be as much the right of the insurer to stipulate "for exception from liability in the event of intentional self- "destruction by the insane, as to stipulate for an exemption from "liability because the hazard of loss is increased from the fact "of the insured engaging in occupations perilous to life, or tak- "ing up residence in an unhealthy climate. In this respect the "law adds a new term to the contract, relieves the association "from any existing liability, and lessens the value and security "of the certificate to be assured. It is not claimed that there is "an inherent power in the association by the adoption of a by- "law to work such radical changes in its existing contracts. The "power is derived from and depends upon the stipulations of the "contract at the time it was made; the stipulations were ex- "pressed in varying terms, and several of them import no more "than would be implied—the observance by the insured of the "requirements of the association, such requirements as were rea- "sonable and intended to promote the harmony of the associa- "tion, and the purposes and objects for which it was formed. "They import also obedience to the by-laws, so far as reasonable, "consistent with the charter and law of the land. We do not "construe them as reserving, or as intending to reserve to the "association, the power to change or avoid its contracts, to lessen "its responsibilities, or to divest its members of rights. This is "not the proper office of a by-law and from the general expres- "sions to which we are referring it can not be fairly presumed or "intended that it was contemplated to affect the members by "other than such by-laws, as it was within the competency of the

"association to enact. But, in addition to these, the averment "of the plea is that the certificate was accepted by the assured "subject to the laws of the order now in force, or which may be "hereafter enacted by the Supreme Commandery. These are "words of large signification, and clearly express that the assured "consented that the contract should be subject to future, as well "as existing by-laws. Parties may contract in reference to laws "of future enactment—may agree to be bound and affected by "them as they would be bound and affected if such laws were "existing. They may consent that such laws may enter into and "form parts of their contracts, modifying or varying them. It is "their voluntary agreement which relieves the application of such "laws to their contracts and transactions from all imputations of "injustice. The members of associations, created for purposes "and objects like those which seem to be the purposes and ob-"jects of this organization, may very properly be required to "assent that the contract conferring upon them these rights shall "be subject to and depend upon the future, as well as the exist-"ing laws adopted by the governing power. The fundamental "principle of such organizations is the mutuality of duty and "equality of rights of the membership without regard to the time "of admission. This can not well be preserved if the members "stipulating for benefits were not required to consent that they "would be subject to future as well as existing by-laws. Time "and experience will develop a necessity for changes in the laws, "and, if the consent were not required, there would be a class of "members bound by the changed laws and a class exempt from "their operation. The case before us is an illustration. Of the "legality and propriety of the provisions relieving the associa-"tion from liability, if a member while insane deprived himself "of life, there is no good reason to question. If no other reason "could be given, that it relieves the association from litigating "with the representatives of a deceased member, the distressing "question of his sanity would be sufficient. If the law was ap-"plied only to certificates issued subsequent to its enactment,

"there would be a class of members having certificates of greater "value than the certificates held by another class; yet each class "would be subject to the same assessments and the same duties. "There is but little room, if any, for the apprehension that ad- "vantage will be taken by the governing body of the assent of the "member to be bound and affected by subsequent laws to impose "upon him unjust burdens or to vary the contract, save so far "as an alteration or modification of it may be promotive of the "general good. Subsequent or existing by-laws are valid only "when consistent with the charter and confined to the nature "and objects of the association. While a subsequent law, because "of the assent of the members, may add new terms or conditions "to a certificate, terms or conditions reasonably calculated to "promote the general good of the membership, and may be valid "and binding, it does not follow that a law, operating the de- "struction of a certificate or a deprivation of all rights under it, "would be of any force. *Korn* v. *Mutual Assurance Society*, 6 "Cranch, 192. Without pursuing the discussion of the ques- "tion, we are of the opinion that the parties intended that the "certificate should be subject to the laws of the association "adopted subsequent to its issue—laws which, if they had been in "force at the time of the issue, would have entered into and "formed a part of it."

In the case of the *Supreme Lodge of Knights of Pythias* v. *Knight*, 117 Indiana, 489, 497, the beneficiary was to receive $1 from each member of a class to which the member belonged, not to exceed $2,000. The number of members in the class was more than 16,000, when the by-laws were so changed as to transfer the greater part of this class to a preferred class, thereby reducing the number to 173. The court said:

"The duly chosen and authorized representatives of the mem- "bers alone are vested with the power of determining when a "change is demanded, and with their discretion courts can not "interfere. Were it otherwise, courts would control all benevo-

"lent associations and all fraternities. It is only when there is "abuse of discretion and a clear, unreasonable and arbitrary in- "vasion of private rights that courts will assume jurisdiction "over such societies or corporations; with the questions of policy, "doctrine, or discipline, courts will not interfere. Courts will "compel adherence to the charter and to the purpose for which "the society was organized, but they will do no more.

"*Stadler* v. *Dist. Grand Lodge*, 3 Am. Law Reg., 589.

"*Hussy* v. *Gallagher*, 61 Ga., 86.

"To justify interference by the courts and warrant the over- "throw of by-laws enacted in the mode prescribed by the by- "laws, it must be shown that there was an abuse of power or that "the later by-law is unreasonable. It is not enough to show that "a better or wiser course might have been pursued, for it must "be shown, that there was an abuse of discretion or that the by- "law is so unreasonable as to be void.

"We do not affirm that a benefit society may, by a change in "its by-laws, arbitrarily repudiate an obligation created by a pol- "icy of insurance, but we do affirm that, where a change is regu- "larly made in its by-laws, and the motive which influences the "change is an honest one, to promote the welfare of the society "and the members are all given an opportunity to avail them- "selves of the change, no actionable wrong is done the members "or their beneficiaries. It may sometimes happen that the inter- "ests of one individual, or of a few individuals, may be im- "paired, but it is the right, and, indeed, it is the duty of the "society to protect the interests of the many rather than of the "few. Persons who become members of such societies must take "notice of this, and one person can not, therefore, demand that "the welfare of the society and the interests of the many be sacri- "ficed for his sole benefit."

The case of *Supreme Commandery* v. *Ainsworth*, above, deciding that a subsequent by-law avoiding the policy for suicide will be valid if the consent of a member to abide by future enact-

ments is given in advance, is followed by two cases in southern states. *Supreme Lodge K. of P.* v. *LaMalta* (Tenn., 1895), 31 S. W., 493, and *Daughtry* v. *K. of P.* (48 La. Ann., 1896), 20 Southern, 712. In the former the agreement was: "I hereby "agree to conform to and obey the laws, rules and regulations of "the order governing this rank now in force, or that may hence- "forth be enacted, or to submit to the penalties therein con- "tained." This agreement was in the written application of membership as it is in the present case. In the second case the agreement was: "And in consideration of the payment hereafter "to said Endowment Rank, of all monthly payments as re- "quired and the full compliance with all the laws governing this "rank now in force, or that may hereafter be enacted, and of "being in good standing under said law, etc."

In the case of *Bowie* v. *Grand Lodge*, 99 Cal., 394; 34 Pacific, 103 (1893), a certificate with coupons attached provided that the members should be "entitled to participate in the special benefit "fund of the order in an amount to be computed according to the "laws of the order, not to exceed the amount named in said "coupons respectively," and the constitution of the order contained a provision that the constitution and laws relating to and governing the beneficiary fund might be amended by a three-fourths ($\frac{3}{4}$) vote of the Grand Lodge. A change of the laws regularly made by the Grand Lodge limited the amount to be paid upon a maturing coupon to a proportionate share of one assessment for the payment of all coupons then maturing. It was held that this did not impair the obligation of the contract, though a different rule of computing the amount to be paid existed at the date of the certificate. The court says:

"This certificate when read and construed as it must be in "connection with the constitution and laws of the defendant ex-

"isting at the time of its issuance, and which provided that a "change might be made in the laws of defendant governing such "fund, means that the plaintiff is to participate in the special "benefit fund of defendant, in an amount to be computed ac- "cording to the laws of defendant in force when the several cou- "pons shall mature. Parties may contract in reference to laws "of future enactment—may agree to be bound and affected by "them as they would be bound if such laws were existing. They "may consent that such laws may enter into and form parts of "their contract, modifying or varying them. It is their volun- "tary agreement which relieves the application of such laws to "the contracts and transactions from all imputation of injustice."

Citing:

Supreme Commandery v. *Ainsworth*, 71 Ala., 436,

And also,

Stohr v. *San Francisco, etc.*, 82 Cal., 557.

In *Bogardus* v. *Insurance Company*, 79 Mich., 440 (1890), the defendant was a mutual fire insurance company maintained by certain fees and assessments. A by-law was passed subsequent to the issuance of the contract which exempted the company from liability for losses caused by fire from steam power used on the premises of any member. In his application plaintiff agreed to observe and be governed by all the conditions of the charter and by-laws as they then existed and any changes that might be thereafter made in the same. The plaintiff had notice of the adoption of the by-law, and made no objection. His property was destroyed by fire from a steam engine used by himself. The court say:

"This policy was issued and received upon the express agree- "ment that it was subject to all changes that should be there- "after made in the charter and by-laws, and such contract is valid. "The defendant was a mutual insurance company; the plaintiff

"as a member had equal voice with the others in the manage-
"ment of its affairs. The by-law was regularly adopted. Under
"the charter he could have had his policy cancelled and with-
"drawn. By his conduct he assented to the by-law and the change
"in the terms of his policy caused thereby. This is not in con-
"flict with the principle established in *Becker* v. *Insurance Com-*
"*pany*, 48 Mich., 610. In that case there was no agreement in
"the policy that it should be subject to change. There the policy
"was declared to be subject to the charter and by-laws, which
"meant, of course, the charter and by-laws as they then existed."

The case of *Becker* v. *Insurance Company*, distinguished above, is one ordinarily cited in support of the contention of the plaintiff herein, and discloses the construction for which we contend. The question is whether there is an agreement in the policy that it should be subject to change.

In the case of *Sargent* v. *Knights of Honor*, 158 Mass., 557 (1893), the application contained the following agreement: "I, "Otis Sargent, having made application to participate in the "benefit fund, do hereby agree that compliance on my part with "all the laws, regulations and requirements now in force, or that "may hereafter be enacted by said order, is the express condition "upon which I am to be entitled to participate in the benefit "fund," and the certificate contained a similar provision and an article of the constitution provided that it might be amended at any regular meeting of the Supreme Lodge by a vote of two-thirds of its members present. Originally "the benefits must "have been paid to the family of the member, or as he might "direct." The order was originally incorporated in Kentucky, but later was reincorporated in Missouri, and a new charter limited the persons who might receive benefits "to such member or "members of his family, or person or persons dependent on the

"member, as he might direct or designate by name." The certificate had been originally payable to Miss Blaisdell, and after the reincorporation the member made an affidavit swearing that she was a "dependent," and a new policy was issued accordingly, but the fact was otherwise, and the court held that the member might have changed the beneficiary at any time; that the person named was not entitled to the benefit, and upheld the right of the order to make such a change.

In the cases of *Hobbs* v. *Association*, 82 Iowa, 107, and *Courtney* v. *Association*, 53 N. W., 238, the rule is asserted that no change may be made in the contract unless the power to alter or amend is reserved, and it is held that the cases are not within the rule. These are examples of the second class of cases mentioned above.

The case of *Chadwick* v. *The Order of Triple Alliance*, 56 Mo. App., 463, 474, is another of the same class.

The cases cited show that this court and the Appellate Courts and courts of last resort in the following states: Alabama, Tennessee, Louisiana, Indiana, Illinois, California, Massachusetts, Missouri, Iowa, Pennsylvania, Michigan, New York, Vermont and Wisconsin have asserted the principle that changes in the by-laws will be valid and binding when there is a provision in the contract for the future enactment of such by-laws.

It is also to be noted that the changes did not "lessen the value "of the policy." The beneficiary designated has nothing but an expectancy, contingent upon the continued good standing of the member until his death, and subject to be divested at any time by having the member exercise his right to change the beneficiary, Article VII., Section 6.

Hopkins v. *Northwestern Life Assur. Co.*, 99 Fed., 199.
Wist v. *Grand Lodge*, 22 Ore., 271, 29 Pac., 610.

The only right which the member had if he continued in good standing was to designate the person to whom the benefit should be paid at his death.

The sum to be paid was not fixed. The contract contained, as a part of itself, the agreement to abide by changes thereafter made in the constitution, which was also a fundamental part of the contract, and which gave to the contract all its vitality. What, then, was the value of his policy? Up to the time of the first change, in 1889, it was the value attached to an expectancy to have his beneficiary receive the amount which every other member expected to have his beneficiary receive, namely, the amount in the death fund arising from one assessment not to exceed $5,000, and all the money paid in assessments, depending wholly upon retention of membership and the collection of assessments from the members. Up to this time Jarman had paid the amount which was necessary to fulfill this expectancy to the deceased member's beneficiaries, namely, the cost of the insurance made necessary by the death losses. During this period he enjoyed the indemnity secured by his contract. Had his death occurred before the change in the by-laws his beneficiary would have received the face of the policy and all assessments. After the first amendment was made, it was applied to every contract in force, and the expectancy from that time was that every member's beneficiary should receive the amount in the death fund arising from one assessment, not to exceed $5,000, and all the money paid on the policy in assessments during the first five years, and after this amendment no beneficiary did receive more than this; Jarman, from this time, paid only the cost of the insurance on this basis and no more, and he no longer paid the cost of the insurance on the old basis. By continuing his payments after this change in his

contract and with knowledge of it and accepting the benefits thus afforded in the reduction of assessments exacted of him to meet claims arising upon the death of other members he acquiesced in the new arrangements, and his beneficiary should be regarded as estopped to question their propriety. When the other amendments were made and applied to the contracts outstanding, the members' beneficiaries received the amount in the death fund arising from one assessment, not to exceed $5,000, and Jarman ceased to pay the cost of the insurance on the old basis, as before.

If he had died at any time when he was paying for more than $5,000 his beneficiary would have received the amount upon which he was paying the cost as others did, but should she receive the additional sum after he has ceased to pay for it? He is charged with notice that the Company, which was purely mutual, was not charging him for more than $5,192 of insurance after 1889, and had never charged him for more than this, and he was likewise charged with notice of the second change and its application to his and all other policies in force. If he desired to continue to carry the additional amount, he should have withdrawn from membership or offered to pay the excess.

Haydell v. *Mutual Res. Fund,* 104 Fed. Rep., 718.

If the company had increased the cost to the old members from the time the change was made in proportion to the amount of insurance which the court says they were then carrying, the court then, under the doctrine in the *Haydel* case, would have upheld this construction of the amendment. In other words, if experience in this society shows that it is necessary to raise more funds to pay the cost of insurance, the power resides in the society, as in the Jarman case, or in the board of directors as provided by the contract in the *Haydel* case, to increase the cost of the insur-

ance, proportionately; but no matter what the stipulations of the parties that they are bound together for the purpose of mutual insurance and that they will abide by future amendments which are found to be necessary as experience demands, the members acting in the constitutional way in regular meeting are not competent to say: "We have banded together to carry out a plan "which is unwise. We will now abandon that part of the plan "which seems to us unwise and go forward from this time upon "a sounder basis." On the contrary, if acting together for the welfare of the society in good faith, they make an amendment which, pursuant to the terms of their contract and the law on the question, becomes a part thereof as though written therein, the court holds that that amendment may be made binding as a condition of membership resting upon those who thereafter join, upon whom it would be binding without reference to such an agreement, but can not be applied to the contracts of the members who made the change. If this is so, and the members thereafter joining can not be made to bear a proportion of the burden resulting to the old class, that old class is in a pool, receiving no new life so far as this particular feature of this contract is concerned which will finally reduce itself to a few members, say three, two of whom will have to contribute to the other one all the money he has paid in assessments, or else the difference which is not contributed by them must come from the other members who have joined subsequent to the change. If the latter is the case, the construction of the court not only makes it impossible to maintain the membership on a basis of exact equality, but makes it necessary and unavoidable that the members joining after the amendment shall contribute to the payment of the benefits to the members of the old class disproportionately to the amount which the old members contribute to the society, and all that has been

said will likewise be true of the second change. The result of these changes, if they are to be applied to new contracts, but not to old contracts, is to divide the membership into classes from time to time, as we have shown, which can not be recuperated by new blood and which, if they enjoy the benefits provided by the constitution before the changes were made, must either contribute the whole of the additional benefits themselves and thus place upon the surviving members of the class a larger and larger burden, or else the additional benefits must be partially contributed by the new members, which is an injustice to them and will deter new members from coming into the society. It is a fundamental principle of assessment insurance that inasmuch as it is based upon the fact that the member only pays the cost of the insurance from time to time, that is, the amount made necessary by the death losses and the expenses, that new blood must be brought into the membership continually, or the society can not exist, and the recent history of assessment insurance shows this to be a fact. On the other hand, if those changes are applied to the membership as a whole, each member contributes to the losses resulting from the deaths of other members exactly on the same basis, and if any change is made, the change affects all and all still continue to contribute upon the same basis and to expect the same benefits for the same contribution. In the case of increase in assessments where the members are all maintained upon one basis, they still continue to contribute proportionately to the amount of insurance they carry. If instead of an increase of assessments the converse of this proposition is put in force and the expected benefits are reduced, the members still continue to pay exactly in proportion to their benefits. As a matter of fact, it might have seemed more wise when these changes were made to apply them

to new contracts only, for this would have retained in force a large amount of insurance for which assessments might have been made in proportion to the amount each member was carrying, but the fact is that this was not done, and that it would not have been wise. The changes were applied to old contracts and the construction adopted has made it unnecessary for the members to contribute anything to carry out the plan of insurance which the court now says the old members were entitled to have carried out. It will now be impossible to put in force, as to old members, the plan which the court says should have been carried out with equity and justice to the other members of the society. It means dissatisfaction to all the members and perhaps disorganization and failure. In such a case as this which affects not alone Jarman's beneficiary, but affects every member and every member's beneficiary, the decision should be controlled by considerations of justice and equity for all and not for Jarman's beneficiary alone. The perpetuity of the society means much to these members and to their beneficiaries, because a large percentage of those holding contracts calling for the payment, as the court says, of all the money paid in assessments are now uninsurable risks, both on account of age and their condition of health, and if the society fails they will be unable to place their insurance elsewhere and will lose all in the effect to gain a small part.

The writer is aware that this argument is too long. But in so far as it is made up by extracts from opinions it is hoped the labors of the court in its consideration may be facilitated. The last question discussed is of such vital interest to assessment companies that, now that it is to be submitted to this court, even on this preliminary application, it is most desirable that its presentation be in some sort adequate.

It is thought that the nature of the questions involved is such as fairly to justify this application. The question just referred to is vital to this and similar companies. Unless this court deals with it the opinion below is likely to have much weight in its ultimate decision. It is thought that the learned court fell into grave error on this question; and also upon the question of constitutional power discussed in the opinion. On another question the court was divided. These considerations seem to warrant an allowance of the writ.

Respectfully submitted.

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